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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962

No. 223

FAIRVIEW PUBLIC UTILITY DISTRICT, NUMBER ONE, WILLIAM E. MOORE, FERN WILLIAMS, GLENN H. EAGON, AL OTTER, AND PAULINE TRUEX, *Appellants*,

v.

CITY OF ANCHORAGE, A MUNICIPAL CORPORATION, *Appellees*

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF ALASKA

JURISDICTIONAL STATEMENT

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v.

CITY OF ANCHORAGE, A MUNICIPAL CORPORATION, *Appellees*

LAWRENCE HAWK, ET AL, *Appellants*,

v.

FAIRVIEW PUBLIC UTILITY DISTRICT NUMBER ONE, ET AL, AND CITY OF ANCHORAGE, A MUNICIPAL CORPORATION, *Appellees*

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF ALASKA

STATEMENT OF JURISDICTION

The Appellants, pursuant to the United States Supreme Court Rules 13 (2) and 15, file this their statement of the basis upon which it is contended that the Supreme Court of

the United States has jurisdiction on a direct appeal to review the final decree in the above entitled cases, and should exercise such jurisdiction in this ase.

Opinion Below

The Supreme Court of the State of Alaska delivered a written opinion of the decision of this case on February 2, 1962. Copies of this final decree herein are attached to this jurisdictional statement.

Jurisdiction

The appeal herein is from a final decree made and entered by the Supreme Court of the State of Alaska, concerning the validity of the annexation of the Fairview Public Utility District, Number One, to the City of Anchorage, a municipal corporation. ACLA Cum Sup 16-7-2, 1959 which Appellants claim to be unconstitutional, and Appellants sought to have same declared null and void for repugnancy to the Fourteenth and Fifteenth Amendments of the United States Constitution. Appellants also complained of the methods allowed by the said provisions, as well as the vagueness thereof. In view of the fact that annexation by the petition-election procedure was allowed residents of the Spenard Public Utility District area, almost simultaneously (SLA 1953, Ch. 183, Secs. 16-1-29, 2 9 n ACLA Cum Sup 1957), Appellants, acting in their capacity as Directors, as well as individual citizen and taxpayers of the illegally annexed area claimed a denial of the equal protection of the laws. The Court held that the petition-election method was still in full force and effect and permitted the residents of the Spenard Public Utility District area to vote as to whether

they should come into the City of Anchorage. However, the Court also held that the Boundary Commission method which permitted no vote on the part of the citizens of Fairview, was a valid and constitutional act, not violative of any rights of petitioners.

The final decree appealed from was made and entered on the second day of February, 1962. Notice of Appeal was filed in the United States Supreme Court on the second day of March, 1962, and an Extension of Time, giving Appellants until July 2, 1962 to file their Jurisdictional Statement, was signed on the 28th day of May, 1962 by Justice William O. Douglas, of the United States Supreme Court.

The Supreme Court of the United States has jurisdiction to review by direct appeal, the judgment and decree complained of by the provisions of 28 USC, Section 1257 (2).

The following decisions are believed to sustain the jurisdiction of the Supreme Court to review the judgment on direct appeal in this case: *Gomillion et al, Petitioners*, v. *Lightfoot*, 364 US 339, *Colegrove* v. *Green*, 328 US 549: *Western Union Telegraph Co.* v. *Foster*, 247 US 105: *Nixon* v. *Herndon*, 273 US 537: *Lane* v. *Wilson*, 307 US 268: *United States* v. *Reading Co.*, 226 US 32: *Graham* v. *Folson*, 200 US 248: *Frost and Frost Trucking Co.* v. *Railroad Commission of California*, 271 US 583: *MacDougall* v. *Green*, 335 US 281, *Yick Wo* v. *Hopkins*, 118 US 356: *Hague* v. *CIO*, 307 US 496: *Shapleigh* v. *San Angelo*, 167 US 646: *Mobile* v. *Watson*, 116 US 289: *Shelley* v. *Kraemer*, 334 US 1: *Guinn* v. *United States* 238 US 347: *Myers* v. *Anderson*, 238 US 368: *Lassiter* v. *Northampson Electric Board*, 360 US 47: *South* v. *Peters*, 339 US 276: *Smiley* v. *Holm*, 285 US 355: *Smith* v. *Allright*, 321 US 649: *Winters* v. *State of New York*, 333 US 507, *Miller* v. *Shoene*, 276 US 272.

Alaska Statutes and Constitutional provisions which are involved are:

1. *Alaska Constitution:*

Article II, Section 19.

The Legislature shall pass no local or special act, if a general act can be made applicable. Whether a general act can be made applicable shall be subject to judicial determination. Local acts necessitating appropriations by a political subdivision may not become effective unless approved by a majority of the qualified voters voting thereon in the subdivision affected.

Article X, Section 3. (Local Government.)

The entire State shall be divided into boroughs, organized or unorganized. They shall be established in a manner and according to standards provided by law. The standards shall include, population, geography, economy, transportation and other factors. Each borough shall embrace an area and population with common interests to the maximum degree possible. The legislature shall classify boroughs and prescribe their powers and functions. Methods by which boroughs may be organized, incorporated, merged, consolidated reclassified, or dissolved shall be prescribed by law.

Article X, Section 9.

The qualified voters of any borough of the First Class may adopt, amend, or repeal a home rule charter in a manner provided by law. In the absence of such legislation, the governing body of a borough or city of the first class shall provide the procedure for the preparation and adoption or rejection of the charter. All

charters or parts or amendments of charters shall be submitted to the qualified voters of the borough or city, and shall become effective if approved by a majority or those who vote on the specific question.

Article X, Section 12.

A local boundary commission or Board shall be established by law in the executive branch of the state government. The commission or board may consider any proposed changes to legislature during the first ten days of any regular session. The chance shall become effective forty-five days after presentation or at the end of the session, which ever is earlier, unless disapproved by a resolution concurred in by a majority of the members of each house. The commission or board, subject to law, may establish procedures whereby boundaries may be adjusted by local action.

Article XV, Section 3.

Cities, school districts, health districts, public utility districts, and other local subdivisions of government existing on the effective date of this constitution shall continue to exercise their powers and functions under existing law, pending enactment of legislation to carry out the provisions of this constitution. New local subdivisions of government shall be created only in accordance with this constitution.

2: *Alaska Statutes:*

ACLA Cum Sup., 1959, Section 16-7-2—Powers:

The Commission May Consider any Local Government Boundary or any Proposed Local Government Boundary Change and Exercise Such Other Powers

AS MAY BE PRESCRIBED BY LAW. IT SHALL PRESENT PROPOSED LOCAL GOVERNMENT BOUNDARY OR LOCAL GOVERNMENT BOUNDARY CHANGES TO THE LEGISLATURE DURING THE FIRST TEN DAYS OF ANY REGULAR SESSION. THE BOUNDARY CHANGE AS RECOMMENDED SHALL BECOME EFFECTIVE 45 DAYS AFTER PRESENTATION TO THE LEGISLATURE OR AT THE END OF THE LEGISLATIVE SESSION, WHICHEVER IS EARLIER, UNLESS DISAPPROVED BY A RESOLUTION CONCURRED IN BY A MAJORITY OF THE MEMBERS OF EACH HOUSE OF THE LEGISLATURE. CITIES SHALL HAVE SUCH POWERS REGARDING BOUNDARIES AS CONFERRED ON THEM BY GENERAL LAW. THE COMMISSION MAY RECOMMEND TO THE LEGISLATURE THE PROCEDURES WHEREBY A LOCAL BOUNDARY MAY BE ADJUSTED BY LOCAL ACTION. (L. 1959 Ch. 185, Sec. 2, Page 288, effective May 6, 1959.)

Chapter 45, Session Laws of Alaska, 1960, Repealing Chapter 185, Session Laws of Alaska, 1959: *Relating to Duties and Power of the Local Boundary Commission and Procedures for the Exercise of those Duties and Providing for an Effective Date . . .*

Section 2. (4)

No local government boundary change may be proposed to the legislature unless a hearing on the change has been held in or in the near vicinity of the area affected by the change.

Section 3.

Meetings and Hearings may be called by the Chairman of the Commission or by the Division of Local Affairs with the concurrence of the Chairman.

(1) All meetings and hearings of the Commission shall be public.

(2) Minutes shall be kept of all meetings and hearings unless the entire proceedings are transcribed in which case minutes shall be made from the transcription. All minutes are a matter of public record.

(3) All votes taken by the Commission shall be entered in the Minutes.

(4) Public notice of any hearing shall be made in the area in which the hearing is to be held at least 15 days before the date of the hearing and the notice shall include the time, date, place, and subject of the hearing. The Director of Local Affairs shall give notice of the hearing at least three times in the press, through other news media, or by posting in a public place whichever is most feasible.

(5) Three members of the Commission constitute a quorum on the conduct of business at a meeting and two members constitute a quorum of a conduct of business at a hearing, provided that a majority of the membership of the commission must vote in favor of the Boundary change before it may be presented to the Legislature. *Effective date is March 28, 1960.* (Italics supplied.)

'ACLA, 1959, Section 16-1-5: DISSOLUTION: Petition for Election Order and Notice: Canvass and Certificate of Results: Order of Dissolution.

Whenever the population of any City in the Territory of Alaska shall fall below 500 in number, the Council

of such City or if such Council shall have ceased to function, 25 persons owning real property in such City may file with the District Court in the Division where such City is situated, a petition praying for an Order to dissolve and vacate the incorporation of such City and setting forth in such petition any good and substantial reasons why such corporation should be so dissolved and vacated. Upon the filing of such petition, the Court shall order an election upon the question as to whether or not the Corporation should be so dissolved, and the Court shall in said Order fix the date of such election, prescribe the notice to be given, and appoint a Judge and two clerks for such election: the order of the Court shall also prescribe the form of ballot to be used at such election. Notice of such election shall be given by publication for a period of four weeks prior to such election if there be a newspaper published in the City, and if not, the notice may be given by posting for said period of such notice in at least three public places in said City. The returns of said election shall be made to the Clerk of the Court, who shall file a certificate of results thereof in the action of dissolution of said corporation, and if from said certificate it appears that three fifths of the persons voting at said election have voted in favor of the dissolution and vacation of said corporation, the Court shall enter an order, dissolving and vacating said corporation: provided, however, that no City shall be entitled to disincorporate until all the indebtedness owing by said City shall have been fully paid, and this fact must be proved to the satisfaction of the Court before the entry of the aforesaid Order. (L 1923, Ch 97, P 213, Sec. 46, CLA 1933, Sec. 2414.)

ACLA Cum Sup. 1957, Section 49-2-13:

First: Any duly incorporated public utility district may be dissolved in like manner as provided for in the dissolution of municipal corporations as set forth in Section 16-1-5: provided however, that for the purposes of this Act, "United States Commissioner as ex officio Justice of the Peace, of the Territory of Alaska in the Recording Precinct", shall be substituted for "district court in the Division", and U.S. Commissioner as Justice of the Peace shall be substituted for "clerk and Clerk of the Court" in said section. A petition for dissolution may be filed, whenever, (a) the population of a district falls below 200, (b) the whole of the integral part of a District becomes annexed to an incorporated city, (c) the government of such district has failed to service any of its functions for more than two successive years, (d) other good and sufficient reasons for dissolution appear and are stated in the petition. No order of dissolution shall be made until all indebtedness owing by the District shall have been paid, or secured to the Bonholders and Creditors of such District in a manner found satisfactory by the Court.

Second: Any money belonging or owing to a Public Utility District and any and all properties owned by such district dissolved as herein provided shall become the property of the Territory of Alaska, in the same manner as property of a dissolved City: except that where a Public Utility District is dissolved because of annexation of the whole or the integral part of such district to an incorporated city, such money or property shall be used, first to pay any outstanding indebtedness to the District, second, any money or property

left thereafter shall become the property of the City but insofar as practicable shall be used for the purpose of making public improvements in the area so annexed, provided that, in cases where a part of the District is annexed containing District assets, the U.S. Commissioner, as ex officio Justice of the peace for the Territory of Alaska in the recording precinct in which the City is situated shall fairly apportion the assets or proceeds thereof between the part annexed and the remaining portion of the District.

Third: Any portion of a District may be exeluded in like manner as provided for in the exclusion of territory from incorporated cities in Section 16-1-2., ACLA 1949, or in the alternative, the Board of Directors of any such District may provide by ordinance or resolution for the exclusion of any portion upon such reasonable terms and conditions as such ordinance or resolution may prescribe, except that such exclusion ordinance shall not become effective until approved by a majority of the qualified electors in the area to be excluded, as well as by a majority of the qualified electors in the remaining portion of such public utility district at a special election held in like manner as is provided for franchise elections, in 49-2-21, ACLA 1949, as amended, provided that when any portion of a public utility district is thus dissolved, all property located in the excluded area shall remain liable for and subject to the lien of any outstanding bonded indebtedness, accrued assessments or taxes of such district, and all property in such excluded area owned by such district shall be and remain the property of the district: provided, that the excluded territory shall not be liable for any taxes levied after the date of exclusion, except for payment of any liability for the

principal, interest and charges on bonded indebtedness subject to lien as aforesaid.

Fourth: When any territory of a public utility is annexed to a city, that territory is automatically excluded from the public utility district from and after the date that the annexation order or ordinance shall take effect: provided, that no order of annexation shall be made until all indebtedness, owing by the District, shall have been paid or secured to the bondholders and creditors of such District, in a manner found satisfactory by the Commissioner.

Cum. Sup. 16-1-29 (1957), Chapter 183, Session Laws of Alaska. *Relating to Annexation and Exclusion of Areas by Municipalities:* and Repealing Section 16-1-21 ACLA 1949, Section 16-1-22, ACLA 1949, as Amended by Ch. 7, SLA 1951 and Ch. 22, SLA 1953: Sec. 16-1-23, ACLA 1949: Sec. 16-1-24, ACLA 1949, as amended by Ch. 7, Session Laws of Alaska, 1951, Ch. 23, SLA, 1953, and Ch. 14, SLA 1955: Secs. 16-1-25 through 16-1-27, ACLA 1955: and Sec. 16-1-28 ACLA 1949, as amended by Ch. 25, SLA 1953.

Annexation Act of 1957, appearing in Alaska Compiled Laws Annotated, Cumulative Supplement, 1958.

Section 16-1-29 b *Petition for Annexation:*

Upon the initiation of interested persons residing within an area contiguous to the municipality, a petition may be circulated within the area proposed to be annexed requesting that such annexation be made . . . (1) Whenever the petition has been signed by 30% or more of the owners of substantial property interests, it may be presented to the council, who shall fix a date for public hearing thereon, at which time any voter

of the city or any person owning a substantial property interest in the area proposed to be annexed, may appear and be heard. The Council shall cause notice of the hearing to be published once each week for two successive weeks, prior to the date of hearing in a newspaper of general circulation in the city, or if there be no such newspaper in the city, then such notice shall be published in a newspaper nearest to the city proposing such annexation, and shall cause notice of the hearing to be posted in two public places in the city and in two public places in the area proposed to be annexed for a like period. . . .

Section 16-1-29h

The Council of such city shall thereupon submit the question to the electors in the area proposed to be annexed to such city in accordance with its ordinance. Such question shall be submitted at a general or special election to be held for that purpose. . . .

Section 16-1-29i

If it shall appear to the Council from the certificate of election filed as aforesaid that a majority of the votes cast at said election were in favor of annexation, then the Council shall by an Ordinance duly passed, (1) incorporate, and adopt all the terms and conditions upon which the annexation has been agreed to by the Council and ratified by a majority of those voting.

Section 16-1-29l

Any action of the Council shall be subject to review in the appropriate Court in such matters coming within its jurisdiction in the same manner as provided with respect to other actions of law.

ACLA, Cum. Sup. 2A-1-7: *Office of the Governor:*

Third Paragraph:

There is hereby created within the Local Affairs Agency, a Local Boundary Commission consisting of five members for overlapping five year terms, one to be appointed from each of the four major senatorial election districts and one from the State at large who will serve as Chairman. The Local Boundary Commission is hereby vested with the duties, powers and responsibilities involved in making studies of local government boundary problems, developing proposed standards and procedures for changing local boundary lines, holding hearings on proposed boundary changes and in preserving its recommendations to the legislature. . . .

The provisions of the *United States Constitution* involved are as follows:

Article XIV, Section I.

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the *privileges* or *immunities* of citizens of the United States: nor shall any State deprive any person of life, liberty or property, without *due process of law:* nor deny to any person within its jurisdiction the *equal protection of the laws.* (Emphasis supplied.)

Article XV, Section I.

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by

a State on account of race, color, or previous condition of servitude.

Questions Presented

1. Whether or not the decision of the Court below that dissolution might be effected under the election procedure in one area under the older statute, permitting residents of the area to vote, whereas, dissolution in the other area was by Boundary Commission method, giving the residents no right to vote, amounted to a denial of the equal protection of the laws and worked a violation of the privileges and immunities clause of the Fourteenth Amendment of the United States Constitution?

   a. Whether or not Alaska Compiled Laws, Annotated Cumulative Supplement, Section 16-7-2, 1959 amounted to "special" legislation and therefore void, in view of "general" legislation covering the same subject in ACLA, Cum Sup., Section 16-1-29b, being in full force and effect?

   b. Whether or not ACLA, Cum., Sup., Section 16-7-2, 1959, amounted to unlawful delegation of power and the taking away of the privileges and immunities of the citizens of the area to be annexed?

   c. Whether or not the rights of citizens NOT of the Negro race to vote are secured under the United States Constitution?

Statement of the Case

Despite an approximate decade of elections to determine whether Fairview Public Utility District Number One should be annexed to the City of Anchorage, the vote remained a vehement "No." Therefore, under the Act, Ch. 185, SLA, 1959, effective May 28, 1959, the Boundary Com-

mission on February 2, 1960 recommended to the Alaska State Legislature that Fairview Public Utility District Number One be annexed to the City of Anchorage. On March 11, 1960 the House of Representatives disapproved the recommendation by a vote of 26 to 12 (2 absent). On March 18, 1960, the Senate approved the recommendation of the Local Boundary Commission by a vote of 13 to 6 (1 absent). On March 20, 1960 the City of Anchorage passed an Ordinance declaring Fairview Public Utility District Number One annexed to the City of Anchorage. At no time were any of the residents of either municipal corporation permitted to vote on the annexation.

A declaratory judgment was sought on behalf of the City of Anchorage on or about April 26, 1960, for a determination by the Court that the Fairview Public Utility District Number One was dissolved as a matter of law and that the City of Anchorage was the successor to all of its assets. (Case No. 69, Alaska Supreme Court.)

In order to determine judicially whether the prior statutes premitting annexation by vote of the area involved were still in full force and effect, despite Statehood and the Boundary Commission, a friendly suit was filed by the City of Anchorage, on April 21, 1960, against the City Clerk of the City of Anchorage, requiring him to hold an election for certain citizens of an area known as Spenard Public Utility District, who were interested in bringing their area into the City of Anchorage. (Case No. 70, Alaska Supreme Court.) Attempts by the Fairview Public Utility District Number One citizens to intervene in this suit were denied by the lower Court.

The Court held that the statutes were in full force and effect and that an election should be held. On January 17, 1961, the residents of Spenard voted to remain as a Public Utility District, and were allowed to remain so.

Due to the expiration of terms of certain members of the Fairview Public Utility District Number One Board of Directors, certain taxpayers filed a complaint for a mandatory injunction against the said officers and directors of the Fairview Public Utility District, demanding that they continue their functions and to hold an election of new officers on June 14, 1960. The City of Anchorage, on June 22, 1960 moved to intervene, which was granted by the Court.

In the opinion of the Court, dated July 18, 1960, the Court below held that as a matter of law there was no need for an election of additional directors in the Fairview Public Utility District, since automatically the District was dissolved by the annexation of same to the City of Anchorage on March 20, 1960. It further held that the only additional function was a winding up of the left-over business and that the appointment of a Master was the next step, for a determination of what assets were on hand.

The Court further held that the annexation was valid, despite the denial of rights of the inhabitants to vote, and that the City of Anchorage automatically was the successor to all the Public Utility Districts' assets.

An Appeal to the Alaska Supreme Court was taken on September 9, 1960 from the decision of the lower Court on all three cases, namely, Nos. 69, 70 and 71 of the Alaska Supreme Court.

The judgments of the lower court were affirmed on February 2, 1962.

Questions Presented Are Substantial

A. *The Constitutional Question*

Under the Fourteenth Amendment of the United States Constitution, "no State shall deprive any person of life, liberty, or property without due process of law: nor deny to any person within its jurisdiction the equal protection of the laws." To permit in an arbitrary fashion certain citizens of the State of Alaska to vote and to deny that same right to certain other citizens of the State is violative of this Section of the United States Constitution, as well as of the privileges and immunities clause. *Graham* v. *Folsom*, 200 US 248: *Gomillion et al*, v. *Lightfoot*, 364 US 339: *Colegrove* v. *Green*, 328 US 549: *Western Union Telegraph Co.* v. *Foster*, 247 US 105: *Hague* v. *C.I.O.*, 307 US 496.

We are faced with a rather confused state of the law and the application of same which is definitely unequal. Under such a system any one City could absorb unlimited parts of the State, almost at will. The right of the residents of the particular utility to vote could be given or could be taken away at the pleasure of the Boundary Commission. The legislative power is set out in a negative way. By its failure to act, a legal action would purportedly follow, which amounts to an unlawful delegation of legislative power. There is a failure to set forth adequate standards as to when a choice of this "dual" system of the right to vote will be exercised. This vagueness in itself is enough to rend the act in question unconstitutional. There is a wide discretion left within the Boundary Commission, and in the City Clerk, which makes possible a discrimination against the voters of certain areas which clearly violates the privilege and immunities clause and the equal protection of the laws clause of the Fourteenth Amendment to the

United States Constitution. The Alaska Supreme Court upheld this system, stating that "those who reside or own property in an area which is to be annexed have no right to insist that annexation take place only with their consent." *368P 2d. 546.* (See Opinion).

It is obvious that the Court has been confused, as so aptly pointed out by Justice Frankfurter in *Gomillion* v. *Lightfoot*, 364 US 339, by dicta in *Hunter* v. *Pittsburgh*, 207 US 161 in that the power of the State with reference to boundaries must be exercised with reference to the United States Constitution. *Shapleigh* v. *San Angelo*, 167 US 646: *Mobile* v. *Watson*, 116 US 289: *Shelley* v. *Kraemer*, 334 US 1: *Colegrove* v. *Green*, 328 US 549.

It is contended by the State of Alaska that the Gomillion case does not apply, and Counsel for the City of Anchorage makes mention in his Brief of the fact that the petitioners are of the same race as Appellee. Of course, municipal corporations have no race, or color and by its discrimination against the Fairview Public Utility District Number One, the State of Alaska deprived white and Negro citizens of their right to vote, since white and Negro citizens live in the Fairview area. By the enactment of the Fifteenth Amendment of the United States Constitution, it was the intention of Congress to secure the right to vote to persons previously denied said right but not to in any way lessen that right to persons not of the Negro race. Surely it is not to be seriously insisted by the State of Alaska, that the Gomillion case would only apply where Negroes are concerned. (See dissent of Justice Douglas and Justice Black in *South, et al* v. *Peters*, 339 US 276, *U.S.* v. *Classic*, 313 US 299, *Colegrove* v. *Green*, 328 US 549.

In the case of *Wo* v. *Hopkins, Sheriff*, 118 US 356, the "same naked and arbitrary power" frowned upon by this Court is given to and exercised by the Boundary Commis-

sion in the instant case. In the Fairview annexation matter, the Boundary Commission was allowed to do by indirection what the City of Anchorage, could not directly have done, namely; to annex Fairview without the vote of the residents concerned and over the protests of its inhabitants. Time and time again the vote of the populace was an emphatic, "No". The power given the Boundary Commission amounted to special legislation of a type frowned upon by this Court in *Yick Wo* v. *Hopkins, supra.* By the clear language of the decision in the Fairview annexation case, 368 P2nd, 540, the prior legislation which permitted residents of the utility to be annexed to vote was still in full force and effect. Therefore, this special legislation to annex without a vote amounted to what this Court at Page 368 of the Yick-Wo case called, "class legislation, descriminating against some and favoring others." The Court said further in that case, that if such legislation within the sphere of its operation affects alike all persons similarly situated, there would be no violation. Therefore, to have two approaches to annexation, would fall within the category of a denial of the equal protection of the laws, since no standard is prescribed stating which one would be resorted to at a given time.

The Yick-Wo case explores the right of suffrage at Page 370 and summarizes same in words appropriate to our case. . . . "But the fundamental rights to life, liberty, and the pursuit of happiness, considered as individual possessions, are secured by those maxims of constitutional law which are the monuments showing the victorious progress of the race in securing to men the blessings of civilization under the reign of just and equal laws, so that, in the famous language of the Massachusetts Bill of Rights, the government of the commonwealth "may be a government of laws and not of men." For, the very idea that one may be compelled to hold his life, or the means of living, or any

material right essential to the enjoyment of life, at the mere will of another, seems to be intolerable in any country where freedom prevails, as being the essence of slavery itself."

The Courts' Summary of its position at Page 373 is important to the problem here presented: "For the cases present the ordinances in actual operation, and the facts shown establish an administration directed so exclusively against a particular class of persons as to warrant and require the conclusion, that, whatever may have been the intent of the ordinances as adopted, they are applied by the public authorities charged with their administration, and thus representing the State itself, with a mind so unequal and oppressive as to amount to a practical denial by the State of that equal protection of the laws, which is secured to the petitioners, as to all other persons, by the broad and benign provisions of the Fourteenth Amendment to the Constitution of the United States. Though the law itself be fair on its face and impartial in appearance, yet, if it is applied and administered by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the Constitution. . . ." *Cf Lassiter* v. *North Hampton Election Board*, 360 US 45.

By the enactment of and the arbitrary application of a "special" law for the annexation of Fairview, while admittedly permitting the use of the general law for the annexation of Spenard, a problem violating the privilege and immunities clause of the Fourteenth Amendment to the United States Constitution faces us. See *Sutherland Statutory Construction, Section 2101.* All laws of a general nature must have uniform operation throughout the State or the privileges and immunities clause of the Four-

teenth Amendment will be violated. For under that clause we find the following: Section 1 . . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." See *Section 2101, supra.* The subject of "classification" necessitating special and general legislation is well covered in *Williams* v. *Mayor and City Council of Baltimore,* 289 US 36, where Justice Cordoza said, "time with its tides brings new conditions which must be cared for by new laws. Sometimes the new conditions affect the members of a class. If so, the corrected statute must apply to all alike. Sometimes the new condition affects only a few. If so, the correcting statute may be as narrow as the mischief. The Constitution does not prohibit special laws inflexibly and always. It permits them when there are special evils with which the general laws are incompetent to cope. The special public purpose will sustain the special form. . . . The problem in the last analysis is one of legislative policy, with a wide margin of discretion conceded to the lawmakers. Only in the case of plain abuse will there be revision by the courts. . . . If the evil to be corrected can be seen to be merely fanciful, the injustice or the wrong illusory, the Courts may intervene and strike the special statute down . . . if special circumstances have developed of such a nature as to call for a new rule, the special act will stand."

Now we are faced with the question, "What was the justification for the enactment of the special statute taking away the right to vote? What was the reason for the inapplicability of the existing general statute giving the right to vote? How could the two stand on the books at the same time? When would one be used instead of the

other? Does not the presence of the two with probability of inequitable use render the special unconstitutional? Is there not a resultant vagueness on account of a failure to set forth adequate standards?

If the subject matter is arbitrarily limited, the result is identification and not classification and the Act is invalid. Acts purporting to classify by population are invalid if the population group selected is too narrow in its span. *Wayne County Board of Review* v. *Great Lakes Steel Co.*, 300 US 29. ". . . it is clear that the additional elements are used to limit an otherwise general statute to a particular community, *Ward v. State ex re Lea*, 224 Ala 242, 139 So 416, the Special Act is clearly invalid. The over-all effect of the special Act in the case at bar was to limit it to the Fairview community and not apply it to the Spenard community, for which the general act was used.

The Fourteenth Amendment to the Constitution of the United States provides that "no state shall deny to any person within its jurisdiction the equal protection of the laws." This guaranty of equal protection of the laws means the protection of equal laws. *Southern Ry. Co.* v. *Greene*, 216 US 400, 412, 54 L. Ed. 536, 30 Sup. Ct. 287. Class legislation is forbidden by this provision, but classification resting upon reasonable grounds of distinction is valid. Class legislation, discriminating against some and favoring others, is prohibited, but legislation which, in carrying out a public purpose, is limited in its application, if within the sphere of its operation it affects alike all persons similarly situated, is not within the amendment." *Barbier* v. *Connolly*, 113 US 27, 30, 28 L. Ed. 923, 5 Sup. Ct. 357. State legislatures are permitted a broad discretion in classification in police laws, tax laws, or eminent domain laws without coming in conflict with this clause of the Fourteenth Amendment. Only when the classification is

without any reasonable basis, and does not apply alike to all in the same situation are statutes declared invalid under this clause . . . while reasonable classification is permitted, without doing violence to the equal protection of the laws, such classification must be based upon some real and substantial distinction, bearing a reasonable and just relation to the things in respect to which such classification is imposed and cannot arbitrarily be made without any substantial basis. Arbitrary selection, it has been said, cannot be justified by calling it classification." Day, J. in *Southern Ry. Co.* v. *Greene*, 216 US 400, 417, 54 L. Ed. 536, 30 Sup. Ct. 287. Likewise, in States that prohibit the passage of special legislation, the Fourteenth Amendment can be invoked in order to obtain Federal jurisdiction. . . . *Weaver* v. *Palmer Bros. Co.*, 270 US 402, 415, 70 L. Ed. 654, 46 Sup. Ct. 320, where the Court said: "The Constitutional guaranties may not be made to yield to mere convenience. . . ."

Although the Boundary Commission was obviously no more than a Committee, it was given such wide, broad powers which could permit it to dissolve a Public Utility, which in Alaska has the power of a municipal corporation, quasi. See *Wood* v. *Gray*, 359 P 2d, 951, 955. We ask the question: how can something so insignificant destroy something so much greater than it is? The Court is asked to judicially notice that in the Act which repealed the one under which Fairview was annexed, provisions of notice and hearing were included, but same were not included in the other. How could a significant step, like the annexation of a whole area, be constitutionally accomplished without some kind of notice to the residents of the area concerned? See *Assigned Car Car Cases*, 274 US 564, 583, 71 L. Ed. 1204, 47 Sup. Ct. 727; *Norwegian Nitrogen Products Co.* v. *United States*, 288 US 294, 77 L. Ed. 796, 53 Sup. Ct. 350.

It is elementary that powers given Administrative Agencies are strictly construed against the powers, as they are purely creatures of the legislature. In numerous cases, a strict interpretation has been adopted where the argument has been made that a statute authorizes an Administrative Agency to exercise powers which tend to interfere with established or traditional property rights; *Interstate Commerce Commission* v. *Northern PR Company*, 216 US 538, the right to free contract, *People* v. *Powell*, 280 Mich. 699, 274, NW 372, 118 ALR 721, or personal freedom and liberty, in *re Smith*, 146 NW 68, 40 NE 497.

Although the rule of non-delegability is expressed in many opinions, the better reasoned cases permit the legislature to condition the operation of the law upon the vote of the people . . . in *re Opinion of the Justices*, 232 Ala 46, 166 SO 706. And this seems proper for, if the Law is complete in itself, there appears no satisfactory distinction between conditioning the operation of the Law on a vote of the people and any other contingency. Usually, however, when such laws are upheld, they anticipate the vote of political subdivisions upon questions primarily of local concern . . . in *re Opinion of the Justices, supra.*

The Justice below obviously based much of his decision on the decision of Judge Folta, a Judge of the Territorial era. It is to be noted that the decision of Judge Folta antedated Statehood and the Alaska Constitution, having been rendered in the year 1954: *Annexation to the City of Anchorage*, 15 Alaska 67, 69, 128 F Supp 717, 718. Only one method of dissolution of public utilities was included in Alaska law at the time, which involved an election. All that Judge Folta did was to order an election for the areas concerned. The long resistance of the Alaska population to the shackles of the City of Anchorage is obvious. The determination of the City of Anchorage to force the surrounding areas to become

a part of it, admitted in the Opinion, of larger areas than Anchorage itself, it also apparent.

However, Article X of the United States Constitution, which provides that "the power not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people," must not be violated. The interpretation of the Alaskan courts takes the right to vote away from people and therefore is in conflict with the provisions of the United States Constitution.

It is also to be noted that the Alaska Supreme Court Judge stated that he would not pass on whether or not the Statutes pertaining to dissolution by election of a Public Utility District were still valid and in force. Yet further on in the Opinion, we find the following: "Our conclusion is not refuted by a 1953 Statute which provides for the dissolution with consent of the voters when the whole or the integral part of a district becomes annexed to the incorporated city. This has application only where annexation takes place under the petition-election procedure which was the only means of annexation in effect prior to the time the State Constitution became effective." . . . "The State may permit residents of local communities to determine annexation questions at an election. But when this is done, the State is not irrevocably committed to that arrangement. If the citizens of the State, in adopting a Constitution, decided that it is in the public interest to establish another election procedure, there is no constitutional obstacle to that course of action."

It is to be noted that the Alaska Supreme Court Justice stated that he was not obliged to pass on whether or not the Statutes pertaining to dissolution by election of a Public Utility District were still valid and in force. Specifically, he states: "the question therefore is not before us and we

express no opinion concerning it." Yet, on Page 545, we find the following: "Appellants contend that the District was not dissolved when annexation took place; that this could be accomplished only by the election procedure set forth by statute. We disagree. This would defeat the chief purpose of annexation, which was to do away with two separate governments in a single community, and thus avoid multiplication of facilities and services, duplication of tax burdens and inevitable jurisdictional conflict and chaos. When annexation was effected, the District was extinguished, and its property, powers and duties were then vested in the City. Our conclusion is not refuted by a 1957 statute which provides for dissolution with consent of the voters when "the whole or the integral part of a district becomes annexed to an incorporated city. This has application only when annexation takes place under the petition-election procedure, which was the only means of annexation in effect prior to the time when the state constitution became effective. It has no application where annexation takes place, under the different method established by Article X, Section 12 of the constitution.... The State may permit residents of local communities to determine annexation questions at an election. But when this has been done, the State is not irrevocably committed to that arrangement. If the citizens of the State, in adopting a constitution, decide that it is in the public interest to establish another election procedure, there is no constitutional obstacle to that course of action. Those who reside or own property in the area to be annexed no vested right to insist that annexation take place only with their consent...."

The Court erred by holding that a statement of reliance on the Fourteenth and Fifteenth Amendments of the United States Constitution failed to inform opposing party and the Court of matters to be decided. Any Court or law in

the United States is charged with knowledge of the provisions of the United States Constitution and they are indelibly written by implication into the laws and the constitution of every state. The inalienable rights covered by the Fourteenth and Fifteenth Amendments are too vital to require a claim made thereunder to set out more than the rights secured thereby.

The Court does admit that a question to be decided by it is whether or not the annexation and dissolution of the district effected without the consent of the voters in the district deprive the Appellants of any rights protected by the Fourteenth and Fifteenth Amendments to the Federal Constitution. (It is noted that there is a failure, on Page 542, to capitalize federal or constitution, but obviously the United States Constitution is referred to.)

The Court contends on Page 545 that "appellants do not point out nor do we perceive in what respect there has been a deprivation of liberty, or property, without due process of law." However, in the paragraph just above that, at Page 545, we find the following: "Appellants next contend that their constitutional rights were violated when they were not permitted to hold an election and vote as to whether annexation should take place. They rely specifically on the due process clause of the Fourteenth Amendment and on the Fifteenth Amendment as applied in the recent case of *Gomillion* v. *Lightfoot*."

With these two conflicting statements before us, the error of the Court is apparent. The Court is asked to take judicial notice of the fact that these cases were handled by laymen. However, the clear manner in which the Constitutional question was raised is a compliment to the way in which our Constitutional rights have been engrained in our American way of thinking. Admittedly, the privileges and immunities clause of the Fourteenth Amendment could more aptly

cover the right to vote. But once the Fourteenth Amendment is before a Court, all of its aspects are to be considered. As previously stated, herein, the statute under which the annexation was handled was a special one, despite the fact that a general one remained on the books. The general one permitted a vote and the residents of the Spenard Utility District voted to remain outside the City of Anchorage, as the residents of the Fairview Public Utility District Number One had always done in the past. The obvious discrimination against the residents of Fairview, forcibly brought in under the special statute, and denied their right to vote by this Act, should have left no doubt in the Court's mind as to how the Appellants had been discriminated against.

Included in "liberty" is the right to vote.

Conclusion

In view of the violations of the privilege and immunities clause and the equal protection of the laws clause of the Fourteenth Amendment, it is submitted that there can be no valid annexation of the Fairview Public Utility District Number One to the City of Anchorage, in this case. Since the Alaska constitution guards against enactment of special legislation where general legislation is available to cover the subject, and the Fourteenth Amendment of the Constitution of the United States forbids special legislation except in extremely rare types of circumstances, not present here, the section under which the Fairview Public Utility District Number One was annexed, namely Ch. 185, Sec. 2, 1959 was void at the time of its use. The fact that that section was repealed shortly thereafter by Ch. 45, SLA 1960 bolsters the argument for its unconstitutionality. Nevertheless, its subsequent repeal by no means lessen the gravity of the error already committed while it was alive. The

double standard for annexation permitted by co-existence in the Law of two methods, one permitting the right to vote, the other taking that right away, with no prescribed standard as to the types of circumstances under which one or the other would be used, is clearly violative of equal protection of the laws and is unconstitutional. The indiscreet delegation of power to the Boundary Commission coupled with the taking away of the inalienable right of suffrage amounted to a violation of the privileges and immunities clause of the Fourteenth Amendment. It is submitted that the passage of the Fourteenth and Fifteenth Amendments merely codified existing rights to United States citizens, and that the right to vote of the Fifteenth Amendment was not meant to indicate that only Negroes would have this unfettered freedom.

Dated At Anchorage, Alaska this 25 day of June, 1962.

Respectfully submitted,

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APPENDIX

THE SUPREME COURT OF THE STATE OF ALASKA

File No. 69

FAIRVIEW PUBLIC UTILITY DISTRICT NUMBER ONE, WILLIAM E. MOORE, FERN WILLIAMS, GLENN H. EAGON, AL OTTER, AND PAULINE TRUEX, *Appellants*,

v.

CITY OF ANCHORAGE, A MUNICIPAL CORPORATION, *Appellee*.

File No. 71

LAWRENCE HAWK, ET AL., *Appellants*,

v.

FAIRVIEW PUBLIC UTILITY DISTRICT NUMBER ONE, ET AL., AND CITY OF ANCHORAGE, A MUNICIPAL CORPORATION, *Appellees*.

Appeals From the Superior Court, Third District, Edward V. Davis, Judge

[No. 61—February 2, 1962]

OPINION

Appearances: Pauline Truex, in pro. per., Anchorage, for Appellants in No. 69, and Leonard J. Grau, in pro. per., Anchorage, for Appellants in No. 71. Richard O. Gantz, Onchorage, for Appellee, City of Anchorage.

Before: NESBETT, Chief Justice, and DIMOND and AREND, Justices.

DIMOND, Justice: These appeals concern the validity of the annexation of the Fairview Public Utility District to the City of Anchorage.

Following a constitutional directive,[1] the legislature in

[1] Alaska Const. art. X, § 12.

1959 established a Local Boundary Commission.[2] It was authorized to consider and recommend to the legislature any proposed local government boundary change, which would become effective no later than the end of the legislative session unless disapproved by a resolution concurred in by a majority of the members of each house.[3]

In 1960 the Commission presented to the legislature its recommendation that the Fairview Public Utility District, an area entirely surrounded by the City of Anchorage, be annexed to the city.[4] The House passed its concurrent resolution disapproving the proposed boundary change.[5] The Senate, however, refused to concur in the resolution of disapproval.[6] This meant, in the language of the constitution and the statute, that the annexation became "effective" by the end of the legislative session, if not earlier.[7]

Following the adjournment of the legislature, the city commenced this action for a declaratory judgment. It asked the court to determine that the District had been dissolved, that the city was the legal successor to all assets of the District, and that a date be set for winding up all affairs of the District and transferring its assets to the city. The complaint also sought to restrain the District and its board of directors from incurring any further obligations without the city's written consent. The defense primarily relied upon was that the failure of the

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[2] SLA 1959, ch. 64, § 7 (§ 2A-1-7 ACLA Cum. Supp. 1959).

[3] Alaska Const. art. X, § 12; SLA 1959, ch. 185, § 2 (§ 16-7-2 ACLA Cum. Supp. 1959). The 1959 act was repealed and superseded by SLA 1960, ch. 45.

[4] Local Boundary Committee, Proposed Boundary Change, Recommendation No. 2. 1960 Alaska House Journal 64-65.

[5] House Concurrent Resolution No. 36, 1960 Alaska House Journal 477.

[6] The resolution was indefinitely postponed by the Senate on March 18, 1960. 1960 Alaska Senate Journal 598.

[7] In identical language both the constitution (Art. 10, § 12) and the statute then in effect (SLA 1959, ch. 185, § 1) provided that a proposed boundary change "shall become effective forty-five days after presentation or at the end of the session, whichever is earlier, unless disapproved by a resolution concurred in by a majority of the members of each house." It is not material in this case to decide whether the effective date of the change was earlier than March 29, the end of the legislative session.

legislature to disapprove the Commission's recommendation for annexation could not effect the dissolution of the District, since a dissolution could be validly effected only by the consent of the voters within the District pursuant to an election held in accordance with statute.[8]

The court entered a summary judgment, holding that the District had been validly annexed to the city, and was dissolved as a matter of law at the time of annexation. The court determined that the city was the legal successor to the District—entitled to all of its assets and charged with it liabilities and governmental functions. A master was appointed to determine the assets and liabilities, and the District's board of directors was ordered, after such determination had been made, to pay the District's outstanding obligations and to transfer any remaining assets to the city.

It is difficult to determine what appellants specifically rely upon as error. The statement of points on appeal, required by Supreme Court Rule 9(e), merely says in broad terms that the appellants "intend to rely upon" the Fourteenth and Fifteenth Amendments to the federal constitution, and upon the Supreme Court's decision in *Gomillion v. Lightfoot*.[9] Such a statement does not serve the purpose of the rule, for it fails to inform the opposing party and the court of matters we shall be called upon to decide.

The appellants' brief is not particularly enlightening, because it does not contain a specification of errors as required by rule.[10] It poses five questions under the heading

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[8] Section 49-2-13 ACLA Cum. Supp. 1957 allows the dissolution of public utility districts in various circumstances, one of which is when "the whole or the integral part of a district becomes annexed to an incorporated city." The procedure to be followed is that established for the dissolution of municipal corporations by § 16-1-5 ACLA 1949. That statute calls for an election and requires a plurality of three-fifths of the votes cast to effect dissolution.

[9] 364 U.S. 339, 5 L. ed. 2d 110 (1960).

[10] Supreme Ct. R. 11(a)(6) provides in part that the appellant's brief shall contain "a specification of errors relied upon which shall be numbered

"Issues Presented",[11] but certain of those questions are beyond the issues properly presented to us for decision. Because of this, we consider it important at the outset to state explicitly what is before us for review and what is not.

In the first place, we are not required to decide whether the court had the authority to appoint a receiver for the District. If one had been appointed, there would be a question as to the propriety of such action.[12] But the court did not appoint a receiver; instead it appointed a master. He was not to exercise any governmental function of the District, but was authorized only to make investigations, find facts, and make reports to the court. This was within the proper scope of a master's functions and powers as provided by rule.[13]

Neither are we obliged to determine whether the statutes pertaining to the dissolution of a public utility district are still valid and in force. The court below held that the District had been dissolved as a matter of law when annexation took place, and that this occurred when the legislature failed to disapprove the Commission's recommendation for

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and shall set out separately and particularly each *error* intended to be urged . . . When findings are specified as *error*, the specification shall state as particularly as may be wherein the findings of fact and conclusions of law are alleged to be *erroneous*."

[11] These read as follows:

1. Was the purported annexation of the Fairview Public Utility District, Number One, to the City of Anchorage legal and in accordance with law?

2. Did the Court have the authority to appoint a receiver for the Fairview Public Utility District?

3. Did the City have the authority to commence municipal proceedings without an election showing consent by the people of the area affected?

4. Did the City of Anchorage have the authority to encumber the real and personal property of the people in the Fairview Public Utility District, without their consent?

5. Are the statutes pertaining to the dissolution of any Public Utility District valid and in force?

[12] In *Wood v. Gray*, No. 41, 359 P. 2d 951, 955 (Alaska 1961), we held that the court did not have authority to appoint a receiver for a public utility district.

[13] Civ. R. 53.

annexation. It was unnecessary for the court to decide whether dissolution might also have been effected under the election procedure provided by statute.[14] The question is therefore not before us, and we express no opinion concerning it.

From an examination of the remaining "issues presented", the statement of points, and the argument in the brief, we believe that there are three questions appropriately before us for decision: (1) whether the Boundary Commission could validly exercise the powers conferred upon it; (2) whether the District was dissolved when annexed to the city; and (3) whether the annexation and dissolution of the District, effected without the consent of the voters within the District, deprived the appellants of any rights protected by the Fourteenth and Fifteenth Amendments to the federal constitution.

The first question has to do with Article X of the state constitution. Its purpose, as stated in Section 1, is to provide for maximum local self-government with a minimum of local government units, and to prevent duplication of tax-levying jurisdictions. In Section 2 it is stated that all local government powers shall be vested in boroughs and cities. The sections that follow provide for the establishment of organized and unorganized boroughs, for the incorporation and government of cities, and for the relationships that are to exist between these two units of self-government. Section 12 calls for the establishment of a local boundary commission, and defines the powers it is to have. The last section provides that special service districts existing at the time a borough is organized shall be integrated with the government of the borough as provided by law.

From these provisions appellants argue that the Local Boundary Commission was not intended to function as it did here until such time as boroughs had been established and necessary legislation had been enacted for integration of existing special service districts with borough government. It would be only after those events had taken place,

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[14] Section 49-2-13 ACLA Cum. Supp. 1957, supra note 8.

appellants contend, that the Boundary Commission could consider and present to the legislature proposed local government boundary changes. In the intervening period, a boundary change resulting from annexation of a special service district to a city could be accomplished only by the petition-election procedure provided by a law enacted prior to the effective date of the constitution.[15]

That construction of Article X is neither required by the plain language of the constitution nor suggested by the proceedings of the constitutional convention. Section 12 says that a local boundary commission shall be established by law in the executive branch of the state government, that it may consider any proposed local government boundary change, and that it may present proposed changes to the legislature. It does not say that these things were not to take place until certain other events had occurred, such as the establishment of boroughs.

The convention proceedings militate against the position adopted by appellants. Article X was drafted and submitted by the Committee on Local Government, which held a series of 31 meetings between November 15 and December 19, 1955. An examination of the relevant minutes of those meetings shows clearly the concept that was in mind when the local boundary commission section was being considered: that local political decisions do not usually create proper boundaries and that boundaries should be established at the state level.[16] The advantage of the method proposed, in the words of the committee—

> . . . lies in placing the process at a level where area-wide or state-wide needs can be taken into account. By placing authority in this third-party, arguments

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[15] SLA 1957, ch. 183 (§§ 16-1-29–29n ACLA Cum. Supp. 1957), as amended, SLA 1959, ch. 103 (§ 16-1-29h ACLA Cum. Supp. 1959).

[16] Alaska Constitutional Convention, Minutes of Committee on Local Government, Nov. 28 and Dec. 4, 1955. (This and all subsequent statements and quotes concerning proceedings of the Alaska Constitutional Convention refer to Records of the Alaska Constitutional Convention, now in the custody of the Secretary of State, Juneau, Alaska.)

> for and against boundary change can be analyzed objectively.[17]

This expressed need for state adjustment of local boundaries was of immediate concern, and not something that the delegates considered would arise only after a borough government had been formed.[18] Following World War II the City of Anchorage, the largest municipality in Alaska, experienced such a rapid growth that it soon outgrew its boundaries, and the population of adjacent and contiguous areas became greater than that of the city. This resulted in efforts by the city to annex a number of these heavily populated and unincorporated areas. Those efforts were met by the most determined opposition. In a 1954 case involving the attempted annexation of adjacent territory, Judge Folta remarked:

> Every impediment and dilatory tactic has been employed by the opponents of annexation, except the homesteaders, to obstruct and harass the city in every move in connection with its efforts to extend its boundaries in the traditional manner to include the adjacent areas. Such oppisition does not appear to be in the public interest or in good faith.[19]

In 1955 there were petitions for the annexation of three additional areas adjacent to the city. Again there were protests and concerted opposition, which required determination by the Territorial District Court. In his written opinion Judge Folta commented on the history of the growth

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[17] Alaska Constitutional Convention, Commentary on Proposed Article on Local Government, Dec. 19, 1955 at 6.

[18] Alaska Const. art. X, § 3, states in the first sentence "The entire state shall be divided into boroughs, organized or unorganized." It was not until 1961 that the legislature enacted a statute providing for the establishment of boroughs. SLA 1961, ch. 146 effective Oct. 1, 1961.

[19] Annexation to the City of Anchorage, 15 Alaska 67, 69, 128 F. Supp. 717, 718 (D. Alaska 1954).

of urban areas, and the deficiencies in existing procedures for annexation. He said:

> The areas sought to be annexed are a part of one compact, urban community comprising the metropolitan area of Anchorage, and except for the invisible corporate boundaries, are a part of the city's social and economic existence. The real boundaries extend away beyond the corporate boundaries. Moreover, not only do the streets of the city extend through these areas, but they bear the names originally given them by the city and the areas themselves are indistinguishable from that part of the city adjacent thereto. The opposition in part is traceable to the failure of the city during the boom to extend its facilities and services into the areas as they developed. This delay resulted in the extension of privately owned utilities and the organization of public utility districts. The situation is such that the annexation law appears to be inadequate, and gerrymandering, or the appearance thereof, would appear to be excusable in attempting to cope with it; otherwise it may well develop that several municipalities will be carved out of this one community, each with a government of its own, resulting in a multiplication of facilities and services, increased tax burdens, and inevitable jurisdictional conflict and chaos. Henrico County, Windsor Farms, Inc. v. City of Richmond, 177 Va. 754, 760, 15 S. E. 2d 309. The Court is not going to lend itself to the imposition of a hydraheaded government on the people of a single urban area unless it has no alternative under the law.[20]

Rejecting the arguments in opposition, the court ordered an annexation election "so that the people may determine for themselves whether the City of Anchorage is to be allowed to expand in the traditional manner or be put in a strait jacket."[21]

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[20] In re Annexation to City of Anchorage, 15 Alaska 504, 509, 129 F. Supp. 551, 554 (D. Alaska 1955).

[21] Id. at 510 (129 F. Supp. at 554).

We cannot assume that when the delegates to the constitutional convention assembled later in 1955, they were unaware of these obstacles faced by Alaska's cities. We cannot assume that they were insensitive to the inadequacies inherent in a system where needed municipal expansion could be frustrated if the electors in a single urban area outside of municipal boundaries did not agree to annexation.[22] In the light of these contemporary realities, we cannot assume that the adjustment of local boundaries at a state level was intended to be delayed pending the formation of boroughs. We must assume that the convention would have used specific language to accomplish that result. We hold that the method for making boundary changes, contemplated by Article X, Section 12 of the constitution, was operative upon the enactment of the 1959 statutes creating a Local Boundary Commission[23] and conferring powers upon it.[24]

Appellants contend that the District was not dissolved when annexation took place; that this could be accomplished only by the election procedure set forth by statute.[25] We disagree. This would defeat the chief purpose of annexation, which was to do away with two separate governments in a single community, and thus avoid multiplication of facilities and services, duplication of tax burdens, and inevitable jurisdictional conflict and chaos.[26] When annexation was effected the District was extinguished, and its property, powers and duties were then vested in the city.[27]

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[22] In 1955 a proposal for annexation would be defeated if at least fifty-five percent of the votes cast in the area sought to be annexed were not in favor of the proposal. SLA 1951, ch. 7, § 2. In 1957 this was changed to fifty percent. SLA 1957, ch. 183, § 10 (§ 16-1-26 ACLA Cum. Supp. 1957).

[23] SLA 1959, ch. 64, § 7 (§ 2A-1-7 ACLA Cum. Supp. 1959).

[24] SLA 1959, ch. 185 (§ 16-7-2 ACLA Cum. Supp. 1959).

[25] Section 49-2-13 ACLA Cum. Supp. 1957, supra note 8.

[26] In re Annexation to City of Anchorage, 15 Alaska 504, 509, 129 F. Supp. 551, 554 (D. Alaska 1955).

[27] In re Sanitary Board of East Fruitvale Sanitary Dist., 158 Cal. 453, 111 Pac. 368, 370 (1910); Dickson v. City of Carlsbad, 119 Cal. App. 2d 809, 260 P. 2d 226 (1953).

Our conclusion is not refuted by a 1957 statute which provides for dissolution with consent of the voters when "the whole or the integral part of a district becomes annexed to an incorporated city."[28] This has application only where annexation takes place under the petition election procedure,[29] which was the only means of annexation in effect prior to the time the state constitution became effective.[30] It has no application where annexation takes place under the different method established by Article X, section 12 of the constitution.

Appellants next contend that their constitutional rights were violated when they were not permitted to hold an election and vote as to whether annexation should take place. They rely specifically on the due process clause of the Fourteenth Amendment, and on the Fifteenth Amendment as applied in the recent case of *Gomillion v. Lightfoot*.[31]

Appellants do not point out, nor do we perceive, in what respect there has been a deprivation of "liberty, or property, without due process of law."[32] The determination of what portions of a state shall be within the limits of a city involves an aspect of the broad political power of the state which has always been considered a most usual and ordinary subject of legislation.[33] The state may permit residents of local communities to determine annexation questions at an election. But when this has been done, the state is not irrevocably committed to that arrangement. If the citizens of the state, in adopting a constitution, decide that it is in the public interest to establish another election procedure, there is no constitutional obstacle to that course of action. Those who reside or own property in the area to be annexed have no vested right to insist that annexation take place only with their consent. The subject of expansion

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[28] SLA 1957, ch. 139 (§ 49-2-13, First. ACLA Cum. Supp. 1957).

[29] SLA 1957, ch. 193 (§§ 16-1-29–29r ACLA Cum. Supp. 1957).

[30] The state constitution went into effect on January 3, 1959.

[31] 364 U.S. 339, 5 L. ed. 2d 110 (1960).

[32] U.S. Const. amend. XIV, § 1.

[33] *Kelly v. City of Pittsburgh*, 104 U.S. 78, 81, 26 L. ed. 658, 659 (1881); 1 Antieau, Municipal Corporation Law § 1.15 at 30 (1958).

of municipal boundaries is legitimately the concern of the state as a whole, and not just that of the local community.[34] There has been no infringement or deprivation of rights protected by the Fourteenth Amendment.

The Fifteenth Amendment and the Supreme Court's decision in the *Gomillion*[35] case are not pertinent. They are concerned with the denial of a citizen's right to vote because of his race or color. That factor is not involved in this case.

In a companion case (No. 71) a number of residents of of the District commenced an action against the District and its board of directors to compel the latter, by mandatory injunction, to hold an election in order that new directors could be elected—the terms of the others having expired. The City of Anchorage moved to intervene, claiming that because the District had been annexed to the city and thus dissolved by operation of law, no purpose could be served by the election of new directors who would have no functions to perform. The court dismissed the action, holding that its decision in the prior action brought by the City for a declaratory judgment was controlling.

What we have said above as to the validity and effect of the annexation of the Fairview District to the City of Anchorage disposes of this second appeal. There would be no sense in requiring the election of a board of directors for a public utility district which no longer was in existence.

The judgments are affirmed.

(2857-1)

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[34] Cf. *Hunter* v. *City of Pittsburgh*, 207 U.S. 161, 52 L. ed. 151 (1907); *Mount Pleasant* v. *Beckwith*, 100 U.S. 514, 524-525, 25 L. ed. 699, 701 (1880).

[35] *Gomillion* v. *Lightfoot*, 364 U.S. 339, 5 L. ed. 2d 110 (1960).